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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,121	07/10/2001	Thomas J. Cloonan	04807000029	9082

23418 7590 10/05/2004

VEDDER PRICE KAUFMAN & KAMMHOLZ  
222 N. LASALLE STREET  
CHICAGO, IL 60601

EXAMINER
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HARPER, KEVIN C

ART UNIT	PAPER NUMBER
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2666

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/902,121

Applicant(s)

CLOONAN, THOMAS J.

Examiner

Kevin C. Harper

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,8-10,13-15 and 19-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-15 and 19-22 is/are allowed.
- 6) ☒ Claim(s) 1-3 and 8-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Arguments***

Applicant's arguments filed July 10, 2001 have been fully considered but they are not persuasive.

1. Applicant argued that Kilkki is not concerned with priority as defined in the Specification and as described in the Remarks. Although the priority of Kilkki is relative to the measured bit rate and nominal bit rate (NBR), the NBR is a user negotiated rate determined by user service fees, such that a user subscribing to a higher NBR will pay more for the service (col. 5, lines 26-29 and 41-43). Therefore, the definition of priority in Kilkki is similar to the definition of levels of priority as described by Applicant in the Specification and in the Remarks.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-2 and 8-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Kilkki (US 6,081,505).

2. Regarding claims 1-2, Kilkki discloses a method for providing data packet congestion control (abstract, last five lines). The method comprises the steps of determining the particular service flow associated with a data packet and the flow rate of the particular service flow (Figure 1, step 44 and Figure 2), quantizing the data packet flow rate into at least one priority level

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(Figure 3, step 76), detecting the instantaneous buffer circuit depth (Figure 1, step 50), and processing the packet (Figure 1, steps 52 and 54) in response to the data packet flow rate, the data packet priority, and the current buffer circuit depth (Figure 6, steps 95-98; Figure 3, steps 74-76).

3. Regarding claim 8, the occupancy level of the buffer is detected (col. 7, lines 27-30).
4. Regarding claim 9, the priority level is stored in the cell header (Figure 3, step 78) and later read (Figure 9, step 113).
5. Regarding claim 10, the header of each cell is read to determine the associated service flow (Figure 15, step 210; note: VCI/VPI).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kilkki (US 6,081,505) in view of Belanger et al. (US 2003/0137938).

6. Kilkki discloses detecting an instantaneous buffer circuit depth (Figure 1, step 44). However, Kilkki does not disclose detecting an average value for the buffer depth. Belanger discloses using an average buffer depth to determine congestion (para. 15, lines last six lines). Therefore, it would have been obvious to one skilled in the art at the time the invention was

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invention was made to use an average value of buffer depth in the invention of Kilkki in order to avoid congestion due to a persistently high volume of data traffic.

***Allowable Subject Matter***

7. Claims 13-15 and 19-22 are allowed.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Khaunte (US 6,546,017) discloses determining priority and bandwidth request allocation for cable modem users (Figures 4-5 and 8).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Harper whose telephone number is 571-272-3166. The examiner can normally be reached weekdays from 11:30 AM to 8:00 PM ET.

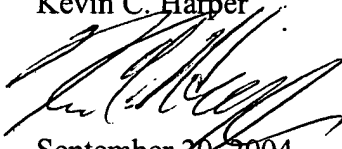
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema S. Rao, can be reached at 571-272-3174. The centralized fax number for the Patent Office is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only (applications must be associated with a customer number). For more information about the PAIR system, see [pair.uspto.gov](http://pair.uspto.gov). Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kevin C. Harper

A handwritten signature in black ink, appearing to read 'Kevin C. Harper', written over the printed name.

September 30, 2004